

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHELLE M. NAULT,

Case No. 2:19-00038-GMN-PAL

Plaintiff,

SCREENING ORDER

(IFP App – ECF No. 1)

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹

Defendant.

13 Plaintiff Michelle M. Nault has submitted an Application to Proceed *In Forma Pauperis*
14 (ECF No. 1) along with a proposed Complaint (ECF No. 1-2). This Application and Complaint
15 are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local
16 Rules of Practice.

I. APPLICATION TO PROCEED *IN FORMA PAUPERIS*

18 Ms. Nault’s Application includes the affidavit required by 28 U.S.C. § 1915(a) showing an
19 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*
20 *forma pauperis* (“IFP”) will be granted. The court will now review the proposed complaint.

II. SCREENING THE COMPLAINT

A. Legal Standards

23 After granting a request to proceed IFP, federal courts must screen a complaint and any
24 amended complaints before allowing a case to move forward, issuing summonses, and requiring a

²⁶ ¹ The proposed complaint generically names the Commissioner of Social Security Administration as the defendant. Nancy A. Berryhill is the Acting Commissioner of Social Security. Pursuant to the Federal Rules of Civil Procedure and the Social Security Act, the court therefore substitutes Nancy A. Berryhill as the defendant. *See* Fed. R. Civ. P. 25(d) (allowing the automatic substitution of a successor to a public officer who is a party to an action but ceases to hold office while the action is pending); 42 U.S.C. § 405(g).

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1 responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Courts are
2 required to dismiss an IFP action if the complaint fails to state a claim upon which relief may be
3 granted, is legally “frivolous or malicious,” or seeks money from a defendant who is immune from
4 such relief. 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed
5 to state a claim upon which relief can be granted under § 1915 is the same as the standard under
6 Rule 12(b)(6) of the Federal Rules of Civil Procedure² for failure to state a claim. *Watison v.*
7 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). A screening under Rule 12(b)(6) is essentially a
8 ruling on a question of law. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

9 A properly pled complaint must provide “a short and plain statement of the claim showing
10 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must
11 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual
13 content that allows the court to make a reasonable inference that a defendant is liable for the claim
14 alleged. *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*
15 *Iqbal*, 556 U.S. 662, 678 (2009)). This plausibility standard is not a “‘probability requirement,’”
16 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556
17 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Although Rule 8(a) does not require detailed
18 factual allegations, it demands “more than labels and conclusions.” *Iqbal*, 556 U.S. at 678.

19 Here, Ms. Nault challenges a decision by the Social Security Administration (“SSA”)
20 denying her disability insurance benefits and supplemental security income under Titles II and
21 XVI of the Social Security Act. Compl. ¶ III. To state a valid benefits claim, a complaint must
22 give the Commissioner fair notice of what the plaintiff’s claim is and the grounds upon which it
23 rests. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (noting that a complaint must contain
24 sufficient factual allegations “to enable the opposing party to defend itself effectively”). A plaintiff
25 must present sufficient detail for the court to understand the disputed issues so that it can
26 meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016); 2 Soc. Sec. Disab.
27 Claims Prac. & Proc. §§ 19:92–93 (2nd ed. 2015). To do so, a complaint should state *when* and

28 ² All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

1 how a plaintiff exhausted her administrative remedies with the SSA and the nature of her disability,
2 including the date she claims she became disabled. The complaint should also contain a short and
3 concise statement identifying *why* the SSA’s decision was wrong and showing that the plaintiff is
4 entitled to relief. *Sabbia v. Comm’r Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D. Ill. 2009),
5 *aff’d by* 433 F. App’x 462 (7th Cir. 2011).

6 **B. Exhaustion of Administrative Remedies**

7 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative
8 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
9 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
10 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
11 claim”). Generally, if the SSA denies an application for disability benefits, a claimant can request
12 reconsideration of the decision. If the claim is denied upon reconsideration, a claimant may request
13 a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant
14 may request review of the decision by the Appeals Council. If the Appeals Council declines
15 review, a claimant may then request review by the United States District Court. 20 C.F.R.
16 §§ 404.981, 416.1481. A civil action for judicial review must be filed within 60 days after receipt
17 of the Appeals Council’s notice of a final decision. *Id.*; 42 U.S.C. § 405(g); 20 C.F.R. § 405.501.
18 The SSA assumes that the notice of final decision will be received by mail within five days of the
19 date on the notice unless shown otherwise. 20 C.F.R. §§ 416.1401, 422.210(c). Thus, an action
20 commenced within 65 days is presumed timely. *Id.* If a claimant does not file a civil action within
21 the allowed time frame, he or she loses the right to judicial review. 20 C.F.R. § 404.900(b). The
22 civil action must be filed in the judicial district in which the claimant resides. 42 U.S.C. § 405 (g).

23 In this case, Ms. Nault alleges that on October 31, 2018, the Appeals Council denied the
24 request for review and the ALJ’s decision became the final decision of the Commissioner. Compl.
25 ¶ V. Thus, it appears she has exhausted her administrative remedies. She timely commenced this
26 action as the Complaint was filed on January 4, 2019, and the Complaint indicates that she resides
27 within the District of Nevada. *Id.* ¶¶ II, V. Accordingly, Nault has satisfied these prerequisites
28 for judicial review.

C. Grounds for Ms. Nault's Appeal

The Complaint seeks judicial review of the Commissioner's final decision and asks the court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial review of the Commissioner's final decision is limited to determining whether: (1) there is substantial evidence in the record as a whole to support the Commissioner's findings; and (2) the correct legal standards were applied. *Morgan v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

In her Complaint, Ms. Nault alleges she has been disabled since the alleged onset date of March 1, 2013, and continuing through the present. Compl. ¶ VI. Nault alleges she has the medically determinable impairments of Cervical and Lumbar Degenerative Disc Disease, Bipolar Disorder, Post-Traumatic Stress Disorder, and Attention-Deficit/Hyperactivity Disorder. *Id.* Despite these impairments, the ALJ rendered a decision on May 19, 2015, denying her claim for disability benefits, and finding that she was not disabled. *Id.* ¶ IV.

Ms. Nault alleges that the ALJ committed reversible error by improperly rejecting (1) the mental health disability allegations, (2) the testimony of Nault and a lay witness, and (3) the opinion of the treating PA-C. *Id.* ¶ VI. The Complaint contains sufficient factual allegations to give the Commissioner fair notice of Nault’s disagreement with the final decision. *See Starr*, 652 F.3d at 1216. Accordingly, her Complaint states a plausible claim for initial screening purposes.

Based on the foregoing,

IT IS ORDERED:

1. Plaintiff Michelle M. Nault's Application to Proceed *In Forma Pauperis* (ECF No. 1) is **GRANTED**. She will not be required to pay the \$400 filing fee.
2. Ms. Nault is permitted to maintain this action to conclusion without prepaying any fees or costs or giving security therefor. However, this Order granting IFP status does not extend to the issuance and/or service of subpoenas at government expense.
3. The Clerk of Court shall **FILE** the Complaint.
4. The Clerk of Court shall **ISSUE SUMMONS** to the United States Attorney for the

1 District of Nevada and **DELIVER** the summons and Complaint to the U.S. Marshal
2 for service.

3 5. The Clerk of Court shall also **ISSUE SUMMONS** to the Commissioner of Social
4 Security and Attorney General of the United States.

5 6. Ms. Nault shall **SERVE** the Commissioner of Social Security by sending a copy of the
6 summons and Complaint by certified mail to: (1) Office of the Regional Chief Counsel,
7 Region IX, Social Security Administration, 160 Spear Street, Suite 800, San Francisco,
8 California 94105-1545; and (2) Attorney General of the United States, Department of
9 Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.

10 7. Following the Commissioner's filing of an answer, the court will issue a scheduling
11 order setting a briefing schedule.

12 8. From this point forward, Ms. Nault shall serve upon Commissioner or, if appearance
13 has been entered by counsel, upon the attorney, a copy of every pleading, motion, or
14 other document filed with the Clerk of Court pursuant to LR IC 1-1 and 4-1 of the Local
15 Rules of Practice. In accordance with LR IC 4-1(d), the parties shall include with each
16 filing a certificate of service stating that a true and correct copy of the document was
17 served on an opposing party or counsel for an opposing party and indicating how
18 service was accomplished. The court may disregard any paper received by a district
19 judge or magistrate judge that has not been filed with the Clerk of Court, and any paper
20 received by a district judge, magistrate judge, or the Clerk of Court that fails to include
21 a certificate of service.

22 Dated this 10th day of January, 2019.

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24 
25 PEGGY A. TEES
26 UNITED STATES MAGISTRATE JUDGE
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